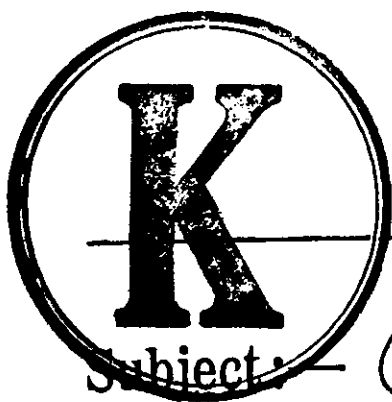


1950.

File No. O.B.R.T.A/50



Legal DEPARTMENT
A BRANCH

Opinions under the Bombay
Revenue Tribunal Act,
1939.

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Std. Sectt. Slip 24 B e.

O.B.R.T.A / 50

434-A.

C O N T E N T S.

Legal Department Vol. No. C.B.R.T.A./1950

SR. No.	Compilation No.	Subject	pages.
	C.B.R.T.A./1950	Opinions under the Bombay Revenue Tribunal Act, 1929.	
1.	R.I.No.8538/17-5-50.	G.C.;R.D. No.5114/40, dt. 12-5-50 Re: Bombay Revenue Tribunal Procedure for ~~presentat~~ on of Govt. case before.	
2.	R.I.No.9514/5-6-50 O.No.9414/6-7-50	Re: License to Walchandnagar Industries to denature Indian made rectified spirit produced from molasses. Order of the Commissioner of excise saying that all companies who frnsvutr dptiy should obtain certificates from the chemical analyser to Govt. as to the spirit being satisfactorily denatured before issuing the same from their warehouses. Appeal by Walchandnagar Industries against the above order, Question whether the commissioner's order is valid.	
3.	R.I.No.18413/7-10-50 O.No.17819/10-12-50	Re: Messrs, Walchandnagar Industries Ltd.-License fees in respect of license granted for manufacture of rectified and denatured spirit. (pl. also see R.T.A. No. 28 Conf. dt. 27-6-49 and Adv. General's opinion No 7 dt. 13-4-40.	
4.	R.I.No.19961/2-11-50 O.No.15598/7-11-50	Re: Appeal filed by Shri P.S. Patel of Navagam before the R.T. against the order of the Collector of Kaira forfeiting Nos. 95 and 97 to 102 granted to him under the old and impracticable tenpore. B R.T. decided the case on merits and took a very compassionate view of the matter, set aside the Collector's order, condoned the breach and recommended to Govt. that the land should be continued to the grantee and other occupants on the ordinary tenpore. Question 1) whether Govt. should propose a hearing of the case on merits. or 2) whether Govt. should acquiesce in the R.R.T.'s decision as proposed to be amended by it. i.e. deleting the portion condoning the breach from its order. (pl. also see RLA's No. 523 dt. 16-1-47 and 9363 dt. 4-10-48)	

Bombay Revenue Tribunal
 Procedure for presentation
 of Government's case before-

GOVERNMENT OF BOMBAY
 Revenue Department
 Circular No. 5114/49.
 Bombay Castle, 12th May 1950

C I R C U L A R.

The attention of the officers concerned is invited to the Government Circular, No. 3724/39, dated 16th August 1941 and 17th November 1943, and they are requested to see that the instructions contained therein are scrupulously followed.

2. After the Commissioner posts are abolished, the reports of the Collectors should be forwarded to Government direct within one month from the date of receipt of requisition from Government.

3. The Collectors are further requested to follow the following instructions very strictly hereafter.-

(i) Separate compilations should be kept ready in each revenue case in the Mamlatdar's and the Collector's office containing an index of papers arranged in chronological order;

(ii) A strenuous and methodical attempt should be made for the swift speedy submission of the reports along with the completed and full record by the Collector to the Official Member of the Bombay Revenue Tribunal on receipt of instructions to that effect;

(iii) Responsibility should be fixed on the Collector's Chitnis or Head Clerk for the timely submission of the record to the official member and any negligence in that respect suitably dealt with.

(iv) Priority should be given to all Bombay Revenue Tribunal cases and all avoidable delays should be cut out in submitting the necessary reports either to the Official Member or to Government.

By order of the Governor of Bombay

To.

The Commissioner of Division
The Commissioner of Prohibition and Excise
The Collectors (including the Collector of Bombay)
The Chief Conservator of Forests.
All Conservators of Forests,
The Remembrancer of Legal Affairs.

JD712/5

S.C. 4 copies
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Submitted with pps

Pl. see R.D. note at page 35 ante

this is an appeal filed before the Bombay Revenue Tribunal by the Walchandnagar Industries Ltd. against the order of the Commissioner of Excise contained in his letter No.234-18/49 dated 17th March 1945. The appellants are a Company registered under the Indian Companies Act. Their business is to plant, grow and cultivate sugar-cane and to manufacture, refine and sell sugar. The Company's factory is situated at Walchandnagar formerly known as Kalamb in the Poona District.

2. In 1943 the appellants decided to denature Indian made rectified spirit produced from molasses. On 15th May 1944 the Commissioner of Excise granted to the appellants a licence authorising them to receive, store and denature Indian made rectified spirit under bond at the bonded warehouse at Kalamb and to issue on sale denatured spirit therefrom under and subject to the provisions of the Bombay Abjuration Act of 1878 and the rules and orders made thereunder and the conditions of the licence. The Licence was to remain in force from 1st April 1944 to 31st March 1945 and it was renewable from year to year for a total period of 9 years. It was also subject to such modifications as may be necessary by reason of any notifications that may be issued by the Government of Bombay under sub-section (2) of section 2 of the Bombay Excise and Revenue Power Alcohol and Petroleum Act, 1942. Clause 13 of the Licence which is relevant for the purpose of this appeal is as follows:-

The rectified spirit denatured under this licence may be issued from the warehouse without prior examination by the Chemist (i.e. the Chemist and Supervisor, Process section, Government Central

Distiller, Nasik Road). The samples up to 12 ounces of such spirit shall however be taken for test by that officer without payment. Where the Chemist certifies the rectified spirit to be insufficiently denatured, the balance, if any, of such rectified spirit remaining in the warehouse shall not be issued until such additional amount of the denaturants as are necessary shall have been added thereto and further samples despatched to the Chemist for test and passed by him. Where, finally, the denatured spirit is not certified by the Chemist to be satisfactory it shall be dealt with as the Commissioner may order in writing."

3. In 1947, the Commissioner of Excise decided that the appellants and other similar companies should obtain certificates from the chemical analyser to Government as to the spirit being satisfactorily denatured before issuing the same from their warehouses. Accordingly on 6th December 1947, the Superintendent, Government Central Distillery informed the appellants that they should obtain certificates from the Chemical & Alcohol Analyser to Government every time the spirit was denatured by them as to the spirit being satisfactorily denatured before issue. The appellants objected to this proposal on the ground that it was impracticable and cumbersome and requested that it should be withdrawn. In reply the Commissioner of Excise informed the appellants by his letter dated 24th December 1947 that the revised procedure suggested by the Superintendent, Government Central Distillery for analysing the samples of denatured spirit before issue was in accordance with the rules prescribed for the purpose and as such it should not be modified. However, after a personal discussion with the representative of the appellants

File III, p.117

9.5

the Commissioner informed the appellants by his letter dated 6th January 1948 that he had no objection to permit the distribution of denatured spirit before receipt of the Chemical Analyser's report on the assumption that should that report be adverse, further issues should be stopped and distribution of the previous supplies should be withheld. He added, however, that this concession was only temporary until provision was made for adequate storage accommodation for the denatured spirit. The appellants gave a rejoinder on 6th January 1948 stating that the new procedure suggested by the Commissioner of Excise was different from the procedure laid down in their licence for testing denatured spirit, that it was not in conformity with the conditions of the licence and as it was difficult for them to provide for additional storage facilities, the new procedure should not be insisted upon. However, his reply of 9th January 1948 the Commissioner of Excise merely referred to his previous letter of 6th January 1948.

"III, p. 119

"III. p.147

4. On 5th January 1948 the Commissioner of Excise informed the appellants that the concession granted to them temporarily by his letter dated 5th January 1948 for the issue of denatured spirit before receipt of ^{the Chemical Analyser's report on the result of} analysis of the sample thereto, would be withdrawn with effect from 1st January 1949 and that it would, therefore, be necessary for the appellants to arrange with effect from 1st January 1948 to have the report from the Chemical Analyser before the denatured spirit can be allowed to be issued from their warehouses. In their reply dated 18th December 1948 the appellant reiterated their objections pointing out that the new system was inconvenient and impracticable.

"III, p. 153.

On 4th January 1948 the Commissioner of Excise sent a telegram to the appellants saying that if the Chemical Analyser's report was not received within 7 days, the denatured spirit may be issued and if an adverse report was received subsequently the issues may be stopped. This was confirmed in the Commissioner's letter on 10th January 1949 in which the appellants were allowed the concession till the end of January 1949 by which time they were expected to complete the erection of additional storage tank for the denatured spirit.

6. On 8th January 1949 the appellants' Attorneys addressed a letter to the Commissioner of Excise pointing out that the withdrawal of the concession granted to them for the issue of denatured spirit before receipt of the Chemical Analyser's report was contrary to clause 13 of the Licence and that if it was insisted upon the stock in the warehouse of the appellants would accumulate beyond the storage capacity which could not be increased. They, therefore, requested for reconsideration of the whole matter. In his reply dated 11th February 1949, the Commissioner of Excise informed the Attorneys that the Licence granted to the appellants was subject to the provisions of the Bombay Abkari Act, 1879 and the rules and orders issued thereunder, and that the privilege granted to them under condition 13 of the licence was subject to alteration by the rules and orders issued under the provisions of the Bombay Abkari Act. The appellants thereafter moved Government who declined to interfere. On 17th March 1949 the appellants' attorneys were informed by the Commissioner of Excise that the appellants were allowed to issue denatured spirit

if the Chemical Analyser's report was not received within 7 days from the date of sending the samples and that this concession would be current only upto the end of March 1949 and would be withdrawn from 1st April 1949. Aggrieved by these orders the appellants have preferred this appeal dated 27th May 1949 to the Bombay Revenue Tribunal.

7. The appellants' contentions are :-

- (1) that the new procedure introduced by the Commissioner of Excise has resulted in the accumulation of a large stock of denatured spirit because of the limited storage capacity which cannot be suddenly increased. and,
- (2) that the Commissioner of Excise cannot impose restrictions or lay down any conditions contrary to the express conditions of the Licence during the pendency of the Licence.

The appeal is under section 60 of the Bombay Abkari Act of 1878. The President of the Tribunal has requested Government to file a written statement to show cause.

- (1) why the Tribunal should not entertain the appeal under section 60 of the Bombay Abkari Act of 1878 read, with section 4(2)(a) of the Bombay Revenue Tribunal Act and serial No. 6 of the Schedule thereto. and
- (2) revise the order of the Commissioner on the ground that the latter in imposing the restriction and laying down the conditions during to the currency of the Licence granted to the appellants has acted in violation of the terms of the contract and therefore, contrary to law.

9. Under section 60 of the Bombay Abkari Act of 1878 all orders passed by the Commissioner are appealable to Government at any time within 90 days from the date of the order complained of. Under sub-section (1) of section 4 of the Bombay Revenue Tribunal Act of 1939 the Tribunal ^{is invested with such appellate & revisional} jurisdiction in revenue cases as was vested in the State Government before April 1937 under any law for the time being in force. Under clause (a) of sub-section (2) read with serial No. VI of the Schedule to the Act, the Tribunal has such jurisdiction in all revenue cases under section 60 of the Bombay Abkari Act of 1878. The order against which the present appeal is filed is an original order passed by the Commissioner and not an appellate order and hence the proviso to section 60 of the Bombay Abkari Act has no application. As regards the question whether this is a revenue case or not, it may be observed that full duty is charged on rectified spirit issued from a warehouse or a distillery, whereas no duty is charged on denatured spirit. Therefore before any spirit can be allowed to be issued without payment of duty, it is necessary to see that it is properly denatured before issue. Therefore, indirecting that the spirit should be certified by the Chemical Analyser as properly denatured before it is allowed to be issued from the warehouse the Commissioner passed an order for safeguarding the revenues of Government. There can, therefore, be no doubt that this is a revenue case within the meaning of section 4 of the Revenue Tribunal Act and consequently no objection can be taken on the issue of the Tribunal's jurisdiction.

9. In challenging the validity of the Commissioner's order the appellants rely principally on clause 13 of their Licence which has been reproduced above in *exlenss. It will be seen on analysing that clause* that it enables the appellants to issue the denatured spirit without prior examination by Government Chemist. The only safeguard which is provided in the clause is that the Chemist shall take samples from the spirit which is issued and if on analysis it is found to be insufficiently denatured the balance is not allowed to be issued until additional denaturants are added thereto. On the other hand, the Commissioner's rejoinder is that the appellants are allowed to issue on sale the denatured ~~spirit~~ spirit under and subject to the provisions of the Bombay Abkari Act of 1878 and all rules and orders made thereunder as well as the conditions of the Licence. It is pointed out ~~that~~ that clause 13 contains only a special concession which was givena till the end of 1947 for facilitating the trade and that in withdrawing the concession and ordering that the ~~in~~ licensees should first obtain a certificate from the Chemical Analyser before issuing the denatured spirit for sale from their warehouse the commissioner has acted in accordance with Rule VI of paragraph 60 of the Bombay Excise Manual. This is the provision on which the Commissioner of Excise has ~~in~~ relied for the validity of the order passed by him.

10. New paragraph 60 of the Bombay Excise Manual contains the rules made by the Government under section 155 of the Sea Customs Act for ascertaining and determining what spirit imported into British India shall be deemed to be denatured spirit. These Rules relate in particular to the denatured spirit imported into the port of Bombay or Karachi. These are not rules ~~made~~ made under the Bombay Abkari Act of 1878

and neither Rule VI quoted by the Commissioner nor any other rule has any application to the facts of the present case. The relevant paragraph is, it seems, paragraph 59 of the Manual which contains the rules for regulating denaturation of Indian made rectified spirit in the Bombay Presidency, but those rules do not contain any provision regarding the issue on sale of denatured spirit from a distillery or a warehouse whether before or after obtaining the certificate of ~~whether before~~ of Chemical Analyser. The office of the Commissioner of Excise has not been able to point out any other rule or order under the Bombay Abkari Act under which the Commissioner could pass the order in question. It seems, therefore, that the appellants are right in contending that during the currency of the ~~the~~ licence the Commissioner cannot insist upon the receipt of the Chemical Analyser's report before they can be allowed to ^S issue their denatured spirit from their warehouse. But the contention is out of place because the question here is not of imposing a new condition during the currency of the licence. If we look at clause (1) of the licence, it is given for one year only ending 31st March and thereafter renewable every year for a period of nine years. There is nothing, therefore, to show that the licence would be renewed on the same terms and conditions. It would, it seems, be competent for the Commissioner while renewing the licence to impose such other conditions as he may consider necessary for safeguarding the revenues of Government. The restrictions complained against had been ~~is~~ imposed by the Commissioner from 1st April 1949. It can, therefore, be urged that he purported to renew the licence subject to his modification and consequently no objection can be taken on the validity of his order.

11. It is, however, necessary to note that the question whether the Commissioner's order is valid

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or otherwise is/now of academic interest in view of the subsequent order passed by the Commissioner of Prohibition and Excise and contained in his letter No. 51-8/49 dated 15th December 1949 addressed to the certain sugar mills in Kolhapur, Belgaum and the Alembic Chemical Works, Baroda. In this letter the Commissioner says that as nephthalene is now added as an additional denaturant, there is no objection to issue denatured spirit from distillery without waiting for the receipt of the analysis report from the Chemical Analyser to Government but that such report should continue to be produced and where the report shows that the spirit has not been satisfactorily denatured, the issues of denatured spirit from the distillery concerned should be stopped forthwith till the defect is satisfactorily remedied. This order has been issued in supersession of all previous orders regarding issues of denatured spirit from distilleries in the State of Bombay and consequently it is clear that the order passed by the Commissioner in respect of the appellants is also superseded and the appeal would not, therefore, survive. If this presumption is correct, it is not necessary to file any written statement as requested by the President of the Tribunal but his attention may be simply drawn to the Commissioner's letter of 15th December 1949 which removes the restriction complained of by the appellants and allows them to issue denatured spirit as usual i.e. without insisting on the prior production of the Chemical Analyser's report. A written statement is, however, drafted and if approved, it may be forwarded to the R.D. if that Department considers that it should be filed.

R.K. 23/6
Sd/ 30-6-

WRITTEN STATEMENT

Following is the written statement of the Government of the State of Bombay in the appeal filed before the Revenue Tribunal by Walchandnagar Industries Limited against the order of the Commissioner of Excise contained in his letter No. 234-18/49 dated 17th March 1949.

1. It is conceded that this Tribunal has jurisdiction to entertain the present appeal under section 60 of the Bombay Abkari Act, 1878 read with section 4(2)(a) of the Bombay Revenue Tribunal Act and Serial Number VI of the Schedule thereto.

2. With regard to the Commissioner's order of 17th March 1949 Government says that in this case there is no question of imposing a new condition or restriction during the currency of the ~~licence~~ licence. Under clause (1) of the licence, it is granted only for one year ending 31st March and thereafter it is liable to be renewed every year for a total period of nine years. It is submitted that the appellants are not entitled to obtain the renewal of the licence on the same terms and conditions. While renewing the licence it would be competent to the Commissioner to impose such further condition as he may consider necessary in the interests of the revenue of Government. The restriction against which the appellants complaint was to be imposed from the 1st April 1949 i.e. from the date of renewal of the licence and the appellants licence ~~may~~ must, therefore, be deemed to have been renewed subject to that restriction.

3. However, Government would invite the Tribunal's attention to the subsequent order of the Commissioner of Prohibition and Excise contained in his letter No. 51.8/49 dated 15th December 1949 addressed to the Kolhapur Sugar Mills Ltd. and others. It will be seen from that letter that the restriction regarding the issue of denatured spirit of which the appellants complain in the present

appeal have now been relaxed and the distilleries have been allowed to issue denatured spirit as usual i.e. without insisting on the prior production of Chemical Analyser's report, having regard to the fact that naphthalene is now added as an additional denaturant. This order has been passed by the Commissioner in supersession of all previous orders regarding the issue of denatured spirit from the distilleries in the State of Bombay. Consequently, the Commissioner's order in question relating to the appellant's distillery also has been superseded and the question whether that order was valid or not ~~does~~ does not now survive and need not be decided.

4. For the above reasons Government says that the appeal does not survive and should be dismissed.

The question whether the Commissioner's order is valid or otherwise is now of academic interest in view of the subsequent order passed by the Commissioner of Prohibition and Excise and contained in his letter No. 51-8/49 dated 15th December 1949 addressed to the certain sugar mills in Kolhapur, Belgaum and the Alambic Chemical Works, Baroda. In this letter the Commissioner says that as nephthalene is now added as an additional denaturant, there is no objection to issue denatured spirit from distillery, without waiting for the receipt of the analysis report from the Chemical Analyser to Government but that such report should continue to be produced and where the report shows that the spirit has not been satisfactorily denatured, the issues of denatured spirit from the distillery concerned should be stopped forthwith till the defect is satisfactorily remedied. This order has been issued in supersession of all previous orders regarding issues of denatured spirit from distilleries in the State of Bombay and consequently, it is clear that the order passed by the Commissioner in respect of the appellants is also superseded and the appeal would not, therefore, survive. It is not necessary to file any written statement as requested by the President of the Tribunal but his attention may be simply drawn to the Commissioner's letter of 15th December 1949 which removes the restriction complained of by the appellants and allows them to issue denatured spirit as usual i.e. without insisting on the prior production of the Chemical Analyser's report.

Sd/
For Remembrancer of Legal Affairs

U. R. to R.D. No. 9414 dated the 6th July 1950.

No. Inw/955/1950. 19
Bombay, 3rd October 1950.

From
Shri K.B. Wassoodew,
President, Bombay Revenue Tribunal.

To
The Secretary to Government,
Legal Department, and
Remembrancer of Legal Affairs.

Sir,
I have the honour, under the provisions of Regulation 14 of the Revenue Tribunal Regulations, to refer for your opinion the following questions arising in this appeal by Messrs. Walchandnagar Industries Limited, against the order of the Commissioner of Excise and Prohibition, dated 19th January 1949, demanding the payment of annual fees at the revised rates sanctioned by Government for renewal of the two licences in the appellant's favour in the year 1949-50, one for manufacture of rectified spirit for non-potable purposes and the other for receiving, storing and denaturing India-made rectified spirit in the appellant's distillery.-

(1) Whether the appellant licensee, in terms of the clause for renewal contained in the original licence, is entitled to the renewal of the licence during the period mentioned in the licences on the same terms as to the payment of fees as in the first year of the licence, notwithstanding the orders contained in Government Resolution, Revenue Department, No. 5357/45, dated 6th ~~January~~ - January 1949, relating to the levy of revised scale of fees for licence granted for manufacture of rectified and denatured spirit, from all ~~distilleries~~; and, distilleries; and,

(2) Whether the Commissioner was justified in demanding the revised fees in terms of the said Government Resolution, under the provisions of any enactment in force relating to the manufacture of rectified spirit from molasses notwithstanding the terms of the original licence.

2. The dispute centres round the proper construction of the renewal clause in the licences originally granted to the appellant company in 1943 and 1944, copies of which are on the record. It appears that in 1943 the appellant company who were manufacturing and refining sugar, was granted a licence to manufacture rectified spirit from -

molasses for non-potable purposes. Clauses 1 of the licence which relates to the renewal thereof is in the following terms:-

"his licence shall remain in force from the first day of April 1943 to the 31st day of March 1944 (both days - inclusive) and shall be renewable from year to year for a total period of ten years; the licence shall remain subject to such modifications as may be necessary by reason of any notification that may be issued by the Government of Bombay under sub-section (2) of section 2 of the Bombay Power Alcohol and Petroleum Act, 1942."

After the licence was granted upon the application of the appellant company in 1944, another licence was granted to receive and store India-made rectified spirit, like its predecessor, this licence also contains a renewal clause in similar form. Under the first - licence, the licensee was required to pay in advance a fee of Rs.1/- and under the second Rs. 75/- That is so stipulated in the respective licences.

3. It will appear that in 1949-50 in exercise of the powers vested in Government under S. 30 of the Bombay Abkari Act, Government revised and increased the fee for the grant of licences both for the manufacture of rectified spirit and for the denaturation of India-made spirit. These revised rates came into force from 1st April 1949. On that account, the Commissioner of Excise demanded the revised scale of fees for the renewal of both the licences when the company applied for such renewals for the year 1949-50. The appellant company obtained the second licence for the denatured - India-made rectified spirit paying the revised fees under protest and has approached this Tribunal against that order.

4. It is the contention of the appellant that the Government orders relate to the grant of fresh licences and not the renewal of old licences and that under the renewal clause, no higher fee than the fee originally fixed could be claimed during the period of the option.

5. The first contention is without substance. The renewal of an annual licence is tantamount to the issue of a fresh licence and the Commissioner would be within his powers to enforce the Government orders, if the renewal clause was not an obstacle to his doing so. The question on which the members of the Tribunal are divided is whether in exercise of the option to claim renewal in the first case for ten years and in the second for nine years, the licensee can claim renewal on the

same terms as to the payment of annual fees. Ordinarily the licensee under a covenant for renewal has, upon the expiration of the term in the original licence, a right to demand a licence for a further term subject to the stipulation arrived at by the parties. Usually a covenant for renewal contains such expression as "on like terms" or "under the same fees" or "on the same form". The question arises whether in the absence of such expression or an express stipulation as to the terms on which the renewal is to be granted, the right rests with the licensee to obtain a renewal on the same terms as to the payment of annual fees as in the original licence.

6. I have made ~~this~~ this reference as the official member is against the appellant's contention and the Non-official Member is unable to make up his mind on the point, whilst I think that in the absence of an express stipulation in the original licence as to the terms of renewal the licensee is entitled to the renewal of the licence on payment of the fees fixed in the original licence.

Yours faithfully

K.B. Wansodew,

President,
Bombay Revenue Tribunal.

Accompts.-

Two files-
including the opinions
of the Official and the
Non-official Members
of the Bombay Revenue ..
Tribunal.

The President of the Bombay Revenue Tribunal has referred this case for opinion on 2 points arising in an appeal pending before the Revenue Tribunal. The 2 points are as follows.-

- (1) Whether the appellant licensee, in terms of the clause for renewal contained in the original licence, is entitled to the renewal of the licence during the periods mentioned in the licences on the same terms as to the payment of fees as in the first year of the licence, notwithstanding the orders contained in Government Resolution, Revenue Department, No. 5357/45, dated 6th January 1949, relating to the levy of revised scale of fees for licences granted for manufacture of rectified and denatured spirit, from all distilleries; and
- (2) Whether the Commissioner was justified in demanding the revised fees in terms of the said Government Resolution, under the provisions of any enactment in force relating to the manufacture of rectified spirit from molasses notwithstanding the terms of the original licence.

It appears that on the 29th of March 1943, the Commissioner of Excise granted to the appellant (Walchandnagar Industries Ltd.) a licence to construct and work a distillery in a portion of its Sugar Factory. A fee of rupee one was charged for the licence. The licence was to be in force for a period of one year from 1st of April 1943 and it was renewable from year to year for a total period of 10 years. On the 15th of May 1944, the Commissioner of Excise granted another licence to the appellant on payment of a fee of Rs. 75/- for receiving storing and denaturing India-made rectified spirit. This licence also was to remain in force for one year. But was renewable from year to year for a period of ten years.

Both licences were renewed from year to year on payment of rupee one in the case of the first licence and a fee of Rs. 75/- in the case of the second licence.

In 1949-50 the Government revised and increased the licence fee for the manufacture of rectified spirit and for the denaturisation of India-made spirit. These revised rates came into force from the 1st of April 1949.

The appellant company applied for renewal of both licences in March 1949. The Commissioner of Excise demanded the licence fees on the basis of the revised scale in respect of each licence. The appellant disputed the demand for payment of licence fees on the basis of the revised scale and contended that he had the right to obtain a renewal of the licence in each case on payment of Rupee one in the case of the first licence, and Rs. 75/- in the case of second licence up to a total period of ten years. The Commissioner of Excise however insisted on payment of licence-fees under the revised scale. The appellant company obtained a renewal of the second licence by paying the revised fee under protest and then applied to the Revenue Tribunal for relief.

It appears that there was a difference of opinion among the members of the Revenue Tribunal as to whether the appellant's contention was correct. The Official member was of the opinion that the Commissioner of Excise had properly demanded the higher licence fee on the basis of the revised scale. The other members of the Tribunal however, came to the conclusion that in the absence of any express stipulation in the original licence as to the terms of renewal the licensee was entitled to the renewal of the licence on payment of the fees fixed in the original licence.

The dispute turns upon the proper construction of the renewal clause in both the licences. That clause is worded as follows:

"This licence shall remain in force from the 1st of April 1943 to the 31st Day of March 1944 (both days inclusive), and shall be renewable from year to year for a total period of ten years, the licence shall remain subject to such modifications as may be necessary by reason of any notification that may be issued by the Government of Bombay under sub-section (2) of section 2 of the Bombay Power Alcohol and Petroleum Act, 1942".

I may also mention that the first para of the licence has a bearing on the point in dispute. The relevant portion of that paragraph is worded as follows:

"Licence is hereby granted to Messrs. Walchandnagar Industries Limited..... authorising them to construct and work a distillery in the portion of their sugar factory at Kalamb in the Poona District, ... and to manufacture rectified spirit from molasses for non-aletable purposes thereat under and subject to the provisions of the Bombay Abkari Act, 1878 (No. V of 1878), and the rules and orders made thereunder, and the conditions of this licence."

It seems to have been urged that the Government orders enhancing the licence fees would apply only to new licences issued for the first time after the 1st. of April 1949, and that they cannot apply to renewals of old licences. I think, as pointed out by the learned President of the Tribunal, that there is no substance in this contention. The renewal of an annual licence is tantamount to the issue of a fresh licence; and all the terms and conditions which are applicable to a new licence ought to be applied in the case of a renewal of an old licence.

The renewal clause & refers in specific terms to the renewal of the licence, from year to year for a total period of 10 years. It does not specifically state that

the renewed would be on the same terms as in the first licence. Generally it is customary to include some phrase in the renewal clause to show that the renewal is to be on the same terms as in the case of the first contract/ It seems that it has been urged by the official member that the renewal clause in the present contract does not bind the Government that the renewal will be made on payment of the same fee as in the case of the first contract. It is contended that the right of the ~~Muzsa~~ Government to revise the licence fee was impliedly reserved under the peculiar wording of the renewal clause. The renewal was to be on such terms as to fees -as the Government may fix from time to time. There is no guarantee of renewal on payment of the same licence fee. The question is how the renewal clause is to be construed in the absence of any express stipulation in the original licence as to the terms of which the renewal is to be granted.

In this state of things, I think the preamble to the licence contained in para 1 of the contract of licence may be taken into account. The preamble makes it clear that the licence was granted "under and subject to the provisions of the Bombay Abkari Act 1878 and the rules and orders made thereunder, and the conditions of the licence". It is possible to urge that the phrase "under and subject to the provisions of the Bombay Abkari Act 1878, and the rules and orders made thereunder," applies to the manner and the method of manufacturing rectified spirit; and the manner and method of receiving and denaturing India-made rectified spirit. But there is no reason why the phrases "under and subject to the provisions of the Bombay Abkari Act should not be taken as a general condition, subject to which the licence was issued.

The enhanced scale of fees was prescribed by the Government in exercise of the powers vested in Government

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under the Section 30 of the Bombay Abkari Act. There is no doubt that under that section of the Abkari Act the Government had the power to revise the scale of fees. If the licence is taken to be subject to the provisions of the Bombay Abkari Act and rules and orders made thereunder, then I think, the Commissioner of Excise would be justified in charging the enhanced rate of fees for renewing the two licences.

The enhancement in this particular case is no doubt very considerable. In the case of the first licence the enhancement in fees will be from rupee one to Rs. 20,000/-, and in the case of the second licence the enhancement in fees is from rupees 75/- to Rs. 10,000/-. The appellant Company has not renewed the first licence by paying the enhanced fee under protest. So the question arises only with reference to the second licence. The enhancement from Rs. 75/ to Rs. 10,000/- would be no doubt considerable, but that is not a decisive consideration in construing the terms of the licence. I think, therefore the first question referred to for opinion should be answered in the negative, and the second question should be answered in the affirmative.

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The following draft reply is suggested for approval :

The preamble of the licence granted in 1944 provides :
"Licence is hereby granted to Messrs. Walchandnagar Industries Limited, Bombay, etc. on payment in advance of a fee of Rs. 75/- authorising them to receive, store and denature India-made rectified spirit under bond at the bonded warehouse etc. and to issue on sale denatured spirit therefrom under and subject to the provisions of the Bombay Abkari Act, 1878 etc. and the rules and orders made thereunder and the terms and conditions of this licence". Condition (1) of the Conditions of the Licence provides". The licence shall remain in force from the first day of April, 1944 to the thirty first day of March, 1945 and shall be renewable from year to year for a total period of 9 years etc.". The licence fee for such licence as then prescribed by the Commissioner under section 25(b) of the Bombay Abkari Act was Rs. 75/- only but the Commissioner revised this fee with the sanction of Government under notification by G.R., P.D.No. 5357-45 dated 6-1-1949 and it was raised to Rs. 10,000/- Then Messrs. Walchandnagar Industries Limited applied for renewal of the licence for 1949-50 the Commissioner of Excise demanded a fee of Rs. 10,000/- They have however paid that fee under protest and have appealed to the Revenue Tribunal. The question raised for R.L.A.'s consideration is whether the licence is renewable on payment of the original fee of Rs. 75/- or of the revised fee of Rs. 10,000/-.

["A lease granting premises for a certain term and purporting to be granted with the option of renewal simply may have effect given to it as it imports that the renewal tenancy is to be of the same duration and subject to the same term as the one to which it succeeds" (see *Louis vs. Stephenson* 1898, 67 L.J.Q. B.295). On the same principle the licence in the present case would be renewable subject to the same terms and conditions. However, "Covenants for renewal must be read to mean that such of the terms and conditions of the original lease as are applicable are to be inserted in the new lease" (see *Zohrab vs. Harris* 1891, 11 N. 2.L.R.12).]

(1) The preamble to the licence in the present case contains the conditions subject to which it is granted. These conditions and the other conditions which have been specifically specified as conditions of the licence will have to be read together and all of them together would constitute the conditions of the covenants of the licence. As stated in the preamble, the licence is granted subject to the provisions of the Bombay Abkari Act and the Rules and Order made thereunder. No doubt, the amount of the licence fee was specifically mentioned in this preamble but this amount was as then fixed by the Commissioner under an order issued under section 35(b) of the Bombay Abkari Act. Consequently, the reasonable inference could be that the amount of the licence fee payable by the licensee is specifically made subject to the provisions of the Bombay Abkari Act and Rules and Orders made thereunder it would follow that if under an order issued under section 35(b) of the Bombay Abkari Act licence fees were varied the licensee would be liable to the fee thus fixed not to the fee stated in the preamble of the licence of 1944. Since the Commissioner fixed the licence fee at Rs. 10,000/- such licence under an order issued under section 35(b) of the Bombay Abkari Act with the sanction of the Government the licence can be renewed only on payment of licence for which would be a condition of the renewed licence and the old condition of the payment of a licence fee of Rs. 75 cannot be inserted.

It appears therefore, that there is not
such substance in the contention of the
licensee.

(3) The question whether the enhancement of the
licence fee to such an extent would be
permissible was also considered by the
R.L.A. in his opinion No. 386 Confl. dated
the 27th June 1949 a copy of which is enclosed
for the Tribunal's perusal

R.T.K./7-

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No. 17819
Office of the
Remembrancer of Legal Affairs
Bombay Castle (Bombay No.1). 18th
December 1950.

To,

The President,
Bombay Revenue Tribunal,
46-C Garden Road,
Cumballa Hill, Bombay.

Subject.-Messrs. Dalchandnagar Industries Ltd.
Licence fees.

Sir,

In continuation of this office letter No. 15656 dated
the 8th November 1950 on the above subject, I have the honour
to enclose herewith my opinion in the matter.

The two files received with your letter No. Law/955/1950
dated the 3rd October 1950 are returned.

Yours faithfully,

SC/ P.L. Ad

RML/8

Remembrancer of Legal Affairs.

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The preamble of the licence granted in 1944 provides Licence is hereby granted to Messrs. Walchandnagar Industries Limited, Bombay, etc. on payment in advance of a fee of Rs. 75/- authorising them to receive, store and denature a India-made rectified spirit under bond at the bonded warehouse etc. and to issue on sale denatured spirit therefrom and under and subject to the provisions of the Bombay Abkari Act, 1878 etc. and the rules and orders made thereunder and on the conditions of this licence". Condition (1) of the Conditions of the Licence provides "The licence shall remain in force from the first day of April, 1944 to the thirty first day of March, 1945 and shall be renewable from year to year for a total period of 9 years etc." The licence fee for such licence as then prescribed by the Commissioner under section 35(b) of the Bombay Abkari Act was Rs. 75/- only but the Commissioner revised this fee with the sanction of Government by Government Resolution, Revenue Department No. 5357-45 dated the 6-1-49 and it was raised to Rs. 10,000/-. Then Messrs. Walchandnagar Industries Limited applied for renewal demanded a sum of Rs. 12 of the licence for 1949-50 the Commissioner of Excise demanded a fee of Rs. 10,000/-. They have however paid that fee under protest and have appealed to the Revenue Tribunal. The question raised for R.L.A.'s consideration is whether the licence is renewable on payment of the original fee of Rs. 75/- or of the revised fee of Rs. 10,000.-

2. The preamble to the licence in the present case contains the conditions subject to which it is granted. These conditions and the other conditions which have been specifically specified as conditions of the licence will have to be read together and all of them together would constitute the conditions of the covenants of the licence. As stated in the preamble, the licence is granted subject to the provisions of the Bombay Abkari Act and the Rules

and orders made thereunder. No doubt, the amount of the licence fee was specifically mentioned in this preamble but this amount was as then fixed by the Commissioner under an order issued under section 35(b) of the Bombay Abkari Act. Consequently, the reasonable inference would be that the amount of the licence fee payable by the licensee was as fixed under that order of the Commissioner. Since the grant of the licence is specifically made subject to the provisions of the Bombay Abkari Act and the Rules and Orders made thereunder it would follow that if under an order issued under section 35(b) of the Bombay Abkari Act the licence fees were varied the licensee would be liable to the fee thus fixed and not to the fee stated in the preamble of the licence of 1944. Since the Commissioner has fixed the licence fee at Rs. 10,000/- for such licence under an order issued under section 35(b) of the Bombay Abkari Act with the sanction of the Government the licence can be renewed only on payment of that licence fee which would be a condition of the renewed licence and the old condition of payment of a licence fee of Rs. 75 cannot be inserted. It appears therefore, that there is not much substance in the contention of the licensee.

3. The question whether the enhancement of the licence fee to such an extent would be permissible was also considered by the R.L.A. in his opinion No. 386-Confl. dated the 27th June 1949 extract of which is enclosed for the Tribunal's perusal. Advocate General's opinion No. 7 of 13th April which was relied on by the R.L.A. in that opinion is also enclosed.

P.M.Lad

Remembrancer of legal Affairs.

Submitted,

This is regarding the appeal filed by Shri P.S. Patel of Navagam before the B.R.T. against the order of the Collr. of Kaira No.L.N.D. 3071, dated 16-4-1945 forfeiting S. Nos. 95 & 97 to 102 granted to him under the old and impartible tenure.

A brief history of the case is as follows .-

The lands in question were purchased by the appellant at a public auction in 1933 and were granted to him by Govt. on old and impartible tenure. In 1936 the appellant partitioned the lands granted to him and mutations were effected in the Record of Rights. For this breach of the conditions on which the lands were held, in 1937 the P.O. ordered the forfeiture of the lands on the ground that all the S.Nos. constituted a single holding and the condition of impartibility applied to the entire holding. However, this time the appellant was asked to cancel the sale - deed and on his not doing and on the change in the mutations being effected, the papers were filed. In 1945, however, in an appeal, filed before the Collr. for forfeiture of the lands on the ground that the said S.Nos. had been leased, and thus there was a breach of condition of the grant the Collr. allowed the appeal and directed the forfeiture of the lands on the ground that the lands were granted on one block to the appellant and that no portion of it could be sold or leased and consequently there was a breach of the conditions of impartibility. Against this order Shri Patel preferred an appeal to the B.R.T. The case was examined by the R.L.A. and as it was found that the Collr's order was indefensible, Govt. did not put in a written statement and requested the S.C.

Tribunal to decide the case on merits. The Tribunal took a very compassionate view of the matter, set aside. The Collrs. order, condoned the breach and recommended to Govt. that the land should be continued to the guarantee and other occupants on the ordinary tenure (see B.R.T.'s order dated 25-4-1947) At this stage the R.L.A. in his opinion No. 9363, dated 4-10-1948 advised that in condoning the breach the B.R.T. has acted without jurisdiction and that to set aside this ultra vires decision it is open to the Tribunal to review its own order 25-4-1947. Accordingly Govt. in R.D. letter dated 18-10-1948 pointed out this to the B.R.T. ~~has now in its letter~~ and it was requested to review its decision. The B.R.T. has now in its letter dated 27-7-1950 stated out that the order of the D.D.C. that the condition as to impartibility was very probably attached indivisually to the S-Nos. and not to the whole area granted as one block and that there was thus no breach of the conditions thereof and that was ready to delete that part of the Tribunal's order condoning the supposed breach and to maintain the rest of the order. It has further pointed out that when it had informed Govt. that they proposed to set aside the Collector's order Govt. in ~~their~~ letter dated 5-2-1947 had intimated that they did not desire to put in a written statement and that if Govt. now thinks that they should be heard on the merits of the case the matter would be fixed for hearing after giving notice to the appellant.

The points now raised and referred to the R.L.A. are :

- 1) Whether Govt. should propose a hearing of the case on merits; or
- 2) Whether Govt. should acquiesce in the B.R.T.'s decision as proposed to be amended by it

That is deleting the portion condoning the breach from its order.

3) As pointed out in R.L.A.'s opinion No. 523, dated the 16th Jan. 1947, the S.Nos. included in the grant cannot be considered as the block granted on an impartible tenure but each S.No. will have to be considered as one unit granted on such tenure, and therefore, it would not be possible to defend the Collector's order directing the forfeiture of the grant.

The B.R.T. even now maintains its view that the condition of impartibility was attached individually to S.Nos. and not to the whole block. The B.R.T.'s view appears to be correct. Deletion of the ultra-vires portion regarding condoning the supposed breach, as the B.R.T. has termed it, would not substantially alter, the other legal position; However, the decision of the B.R.T. otherwise, appears to be correct on merits. No useful purpose would be served by asking for a hearing now. It would therefore be advisable to acquiesce in the decision of the B.R.T.

Papers may be seen and returned. The view taken in the R.D. office note is correct.

RTK 6/11

R.L.A. 6d

6-11

U.R. to R.D. No. 15598 dated 7-11-1950.